IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.1.2005

CORAM:-

THE HONOURABLE MR. JUSTICE V. KANAGARAJ

W.P. No.9382 of 1997

K.Ramaswamy .. Petitioner

Vs.

1. The Tamil Nadu Water Supply
   & Drainage Board,
   rep. by its Managing Director,
   31, Kamarajar Salai, Chepauk,
   Chennai-5.

2. The Managing Director,
   Tamil Nadu Water Supply
   & Drainage Board,
   31, Kamarajar Salai, Chepauk,
   Chennai-5.

3. The General Manager,
   Tamil Nadu Water Supply
   & Drainage Board,
   31, Kamarajar Salai, Chepauk,
   Chennai-5. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the relief as stated therein.

For petitioner : Mr.A.Jenasenan

For Respondents : Mrs.Sudharsana Sundar

O R D E R:-

This writ petition has been filed seeking to issue a Writ of Certiorarified Mandamus calling for the proceedings of the first respondent made in DCS/I/SCS/94-21 dated 19.12.1996 and the order of the first respondent made in B.P.Ms.No.203 dated 12.5.1997 and the consequential proceedings of the second respondent made in DCS/I/SCS/94-22 dated 3.1.1997 and the further consequential proceedings of the third respondent made in K.Dis.127010/ENT-I/A.1/HO/96 dated 5.3.1997 and quash the same and consequently direct the respondents to treat the petitioner's period of suspension as on

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duty and grant all the attendant benefits.

2. The case of the petitioner is that he entered into the service of the respondent Board in the year 1971 and in the year 1980 he was promoted to the post of Section Officer; that on 18.7.1996, a charge memo. was issued on him alleging that he destroyed the attendance register and trespassed into the General Manager's room and shouted at him and he also instigated the other staff members not to sign the attendance register. Based on these charges, an enquiry was held and the enquiry officer gave a finding that both the charges were partly proved and on 19.12.1996, the disciplinary authority has imposed a punishment of stoppage of increment for six months without cumulative effect, challenging which, he preferred a statutory appeal which was rejected on 12.5.1997. Aggrieved, the petitioner has come forward to file the above writ petition praying for the relief extracted supra.

3. During arguments, the learned counsel appearing on behalf of the petitioner would submit that the petitioner was the President of the Staff Union; that according to the petitioner, the Board followed two types of attendance, one the attendance register, the other in the white sheet and this was objected to by the petitioner as the President of the staff union; that only as the president of the said union, he went into the General Manger's room along with two other employees and requested the attendance to be marked only in the Register and not in the white sheet, but he never instructed the staff members not to sign the attendance register; that the enquiry officer's report has not been based on any evidence or materials; that the disciplinary authority too, while imposing the punishment, has not applied his mind since no independent reason is assigned by him for imposing the punishment; that even on appeal, the appellate authority also has not assigned any reason for rejecting the appeal. Learned counsel would further submit that the petitioner attained superannuation on 30.7.2004 and the charges are not serious in nature. On these grounds, the learned counsel would seek to allow the writ petition as prayed for.

4. In reply, the learned counsel appearing on behalf of the respondents would submit that the manner in which the petitioner behaved in tearing the attendance register is to be condemned and even for that act committed by the petitioner, only a very mild punishment has been imposed on him and would seek to confirm the orders passed by the respondents. The counter filed on behalf of the respondents would also emphasis only this point without any other valid point for proper consideration and therefore tracing of the counter would only result in reiteration of the same point and hence it is decided not necessary.

5. In consideration of the facts pleaded and having regard to the materials placed on record and upon hearing the learned

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counsel for both, this Court is able to see that the charges are very mild being that the petitioner destroyed the attendance register and entered into the General Manager's room and shouted against at him. On the part of the petitioner, he would come forward to fairly plead that he was the Union leader and that he himself and other employees only protested against getting the signatures not only in the attendance register but also in a white sheet and this attitude was protested on behalf of the Union members and nothing was done in his individual capacity nor any such untoward incident took place as the charge goes and therefore he would plead that the petitioner is innocent of the charges. Even on the part of the very charge memo, nothing is revealed that towards his personal end or with an intention or motive the petitioner has indulged in any such delinquency and since being very mild in character even the authorities below have only arrived at the conclusion that the charges came to be proved partly and therefore the petitioner would plead to treat his case sympathetically.

6. On the part of the petitioner the learned counsel would argue that non-application of mind on the part of the disciplinary authority is widely prevalent in the conclusion that he arrived at to hold the petitioner guilty and to award punishment of stoppage of increment without cumulative effect for six months. It is also further known that the petitioner has attained superannuation on 30.7.2004 and since the charges are not serious in nature, the Department, instead of concluding to punish the petitioner, could have thought of dropping further proceedings with reprimand. Moreover, this Court is not able to see, even on the face of the very charge any bad intention or ill-motivated designs of serious nature on the part of the petitioner. At this distance point of time particularly when it is alleged that the petitioner had attained superannuation on 30.7.2004, this Court is of the view that the respondents, instead of framing the charges, in the circumstances of the case wherein it is revealed that the petitioner did not indulge in any delinquency towards his personal end nor to cause any damage to the reputation of the respondents/management or the Managing Director could have dropped further proceeding and hence this Court is not able to find any reason or object towards achieving anything constructive for the Management and hence it could only be held that the charges have been framed out of context and in an inappropriate manner and hence the same become liable to be set aside and consequently the orders passed by the respondents are also liable to be quashed and hence the following order:

In result,

(i) the above writ petition succeeds and the same is allowed;

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(ii) the proceedings of the first respondent made in DCS/I/SCS/94-21 dated 19.12.1996 and the order of the first respondent made in B.P.Ms.No.203 dated 12.5.1997 and the consequential proceedings of the second respondent made in DCS/I/SCS/94-22 dated 3.1.1997 and the further consequential proceedings of the third respondent made in K.Dis.127010/ENT-I/A1/HO/96 dated 5.3.1997 are hereby quashed;

(iii) the respondents are hereby directed to treat the petitioner's period of suspension as on duty and to grant all the attendant benefits due and payable to him forthwith;

(iv) There shall be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copy to:-

1. The Managing Director,
   Tamil Nadu Water Supply & Drainage Board,
   31, Kamarajar Salai, Chepauk, Chennai-5.

2. The General Manager,
   Tamil Nadu Water Supply & Drainage Board,
   31, Kamarajar Salai, Chepauk, Chennai-5.

One cc to Mr.A.Jenasenan, Advocate SR.3754.

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